IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH

FRIDAY, THE 17TH AUGUST 2007 / 26TH SRAVANA 1929

WP(C).No. 3439 of 2006(H)

PETITIONER:

PRASAD JOHN, S/O. JOHN,
AGED 38 YEARS, PANACHIKUNNEL HOUSE,
ANAVIRATTI VILLAGE, DEVIKULAM TALUK,
IDUKKI DISTRICT.

BY ADV. SRI. K. JAJU BABU
SMT. M.U. VIJAYALAKSHMI

RESPONDENT:

THE FOREST RANGE OFFICER,
KOOMBANPARA, ADIMALI, IDUKKI DISTRICT.

ADDL R2: THE SUB COLLECTOR, DEVIKULAM.

ADDL R3: THE DIVISIONAL FOREST OFFICER,
MUNNAR

(ADDITIONAL RESPONDENTS 2 AND 3 ARE IMPLEADED AS PER ORDER DATED 27.03.2006 IN I.A. NO. 4821/2006)

BY GOVERNMENT PLEADER SRI. RENJITH THAMPAN.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 17/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 3439/2006(H)

A P P E N D I X

PETITIONER'S EXHIBITS:

EXT. P1	**:**	**COPY OF JUDGMENT DATED 11TH AUGUST, 2005 OF THIS HON'BLE COURT IN W.P(C) NO. 14159/2004.**
EXT. P2	**:**	**COPY OF LETTER NO. B5-6318/03(1) DATED 16.12.2005 OF THE SUB COLLECTOR, DEVIKULAM TO THE RESPONDENT.**
EXT. P3	**:**	**COPY OF THE REPORT OF THE KOOMBANPARA SECTION FORESTER GIVEN TO THE RESPONDENT DATED 17.12.2005.**
EXT. P4	**:**	**COPY OF LETTER NO. 253/2005 DATED 22.12.2005 OF THE RESPONDENT TO THE SUB COLLECTOR, DEVIKULAM.**
EXT. P5	**:**	**COPY OF THE PROCEEDINGS NO. B5-6318/03(2) DATED 4.1.2006 OF THE SUB COLLECTOR, DEVIKULAM.**
EXT. P6	**:**	**COPY OF THE REPRESENTATION WITH SKETCH AND LIST OF LOGS SUBMITTED BEFORE THE RESPONDENT.**
EXT. P7	**:**	**COPY OF JUDGMENT DATED 26.7.02 IN OP. 7454/2001 OF THIS HON'BLE COURT.**
EXT. P8	**:**	**COPY OF APPLICATION SUBMITTED BY THE PETITIONER BEFORE THE RESPONDENT DATED 20.3.06.**
EXT. P9	**:**	**COPY OF PROCEEDINGS NO. B5-6318/03 DATED 24.3.06 ISSUED BY THE SUB COLLECTOR, DEVIKULAM.**
EXT. P10	**:**	**COPY OF PROCEEDINGS DATED 19.4.06 OF THE 1ST RESPONDENT VIDE NO. 254/05 WHICH IS APPROVED BY THE ADDL. 3RD RESPONDENT ON 27.4.06 AND COMMUNICATED TO THE PETITIONER ON 28.4.06.**
EXT. P11	**:**	**COPY OF OBJECTION SUBMITTED BY THE PETITIONER BEFORE THE ADDL. 2ND RESPONDENT DATED 30.3.06.**
EXT. P12	**:**	**COPY OF PETITION (OBJECTION) SUBMITTED BY THE PETITIONER BEFORE THE ADDL. 3RD RESPONDENT DATED 30.4.06.**
EXT. P13	**:**	**COPY OF NOTIFICATION DATED 04.10.06 VIDE NO. G.O. (P) NO. 34/06/FOREST AND WILD LIFE.**
EXT. P14	**:**	**COPY OF G.O. (MS) 141/70/LRD DATED 12.5.1970 ISSUED BY THE GOVERNMENT.**

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EXT. P15	**:**	**COPY OF SURVEY SKETCH IN RESPECT OF PETITIONER'S PROPERTY SITUATED IN R.S. NO. 356/1 IN ANAVIRATTY VILLAGE.**

1ST RESPONDENT'S EXHIBITS:

EXT. R1(a)	**:**	**COPY OF NOTIFICATION NO. 6474/B1/90/FOREST DT. 12.9.1990.**
EXT. R1(b)	**:**	**COPY OF TOPO SHEET (RELEVANT PORTION).**
EXT. R1(c)	**:**	**COPY OF ROUGH SKETCH OF ANAVIRATTY VILLAGE, PREPARED BY THE VILLAGE OFFICER, ANAVIRATTY VILLAGE.**

// True Copy //

P.A. to Judge.

smp

KURIAN JOSEPH, J.

W.P. (C). NO. 3439 OF 2006

Dated this the 17th day of August, 2007.

J U D G M E N T

This writ petition is filed with the following prayers:

> i) Issue a writ of certiorari calling for the records leading to Ext. P6 and quash the order of the respondent rejecting the transit pass to the petitioner.
>
> ii) Issue a writ of mandamus or any other order, writ or direction directing the respondent to issue transit pass as provided under Rule 4(1) of the Kerala Forest Produce Transit Rules, 1975 (Form No. III) as applied for under Ext. 6 forthwith.

2. According to the petitioner, the trees were cut and removed with the permission of the Revenue Department. However, the Forest Department declined to issue passes on the ground that the trees stood at a place covered by the notification issued under the Kerala Preservation of Trees Act, 1986.

3. On 21.06.2007, this Court issued a direction to learned Government Pleader to ascertain whether the contention of the petitioner that his properties would come within the purview of the notification is correct or not. That is still a contentious issue on which a decision has to be taken by the Government, submits the learned Special Government Pleader.

4. It is seen that the petitioner has already removed the trees on furnishing bank guarantee. Petitioner submits that he is prepared to offer his property itself as security since the decision by the Government is likely to be delayed. In the above circumstances, this writ petition is disposed of as follows.

There will be a direction to the Government to take a decision as to whether the place from where the petitioner cut and removed the trees is covered by any notification issued under the Kerala Preservation of Trees Act. The Government will also decide as to whether the property is revenue land or not. The petitioner shall be afforded an opportunity for hearing in the process. He is free to offer his immovable property towards security in favour of the additional third respondent in respect of the trees already removed by him, in substitution of the bank guarantee already furnished. The fate of the security thus offered by the petitioner will depend on the order passed by the Government as above.

KURIAN JOSEPH, JUDGE.

smp